

OGC HAS REVIEWED.

CROSS REFERENCE

CONTRACTOR'S SECURITY AGREEMENT

Carbon copy of this contract is filed in: 600 A Legal Forms *Security Agreements*  
(*Contracts*)

Contract Section

Attention:

Legal Staff

STATINTL

16 March 1950

Proposed CPFF Contract Form

1. In reviewing the proposed CPFF contract form, returned herewith, I would like to submit the following comments for your consideration and discussion.
2. In the first "Whereas" clause, I do not believe the word "adequate" is necessary.
3. In the second "Whereas" clause, I suggest the following wording:  
  
"Whereas the Government desires the contractor to conduct such research and development work, and construct whatever equipment or articles may be hereinafter specified;"
4. In regard to the third "Whereas" clause, the designation of "actual cost" is restrictive and apparently not intended in view of Article 3 (a). I suggest the following:  
  
"Whereas the contractor is willing to provide said facilities and qualified personnel and undertake such work on a cost-plus-a-fixed-fee basis as hereinafter specified;"
5. Suggest deletion of the fourth "Whereas" clause (as unnecessary).
6. Suggest the following wording in lieu of the fifth "Whereas" clause:  
  
"Whereas the contemplated work will require that a substantial part of the materials, supplies, and other articles required therefor be either consumed or incorporated into equipment or other articles to be developed during the course of the work."
7. Don't believe there is any necessity for the sixth "Whereas" clause.
8. In Article 1 (a), entitled "Scope of Subject Work," suggest insertion of the word "qualified" between "necessary" and "personnel" on the third line, and before the second half of the same paragraph, the following sentence:  
  
"The contractor shall cooperate in consultation and otherwise as may be practicable with the Contracting Officer or his authorized representative upon the request of either."

Following the phrase, "The contractor shall report the progress of

such," insert the word "work," and delete "studies and investigations." After "at intervals of not more than 60 days or as otherwise directed by the Contracting Officer or his authorized representative," add

"The contractor shall prepare specifications and reports and supply full information concerning the components, devices, apparatus and methods with which this contract is concerned, and shall deliver them, together with all models developed hereunder, to the Contracting Officer or his designee upon their request. The contractor shall furnish a complete and final report of work under this contract, and shall maintain records in which descriptions and illustrations of any inventions made in this work shall be entered as they are made, with appropriate dates, signatures, and witnesses. The contractor's undertakings under this paragraph are hereinafter called "the Subject Work." (Throughout, suggest capitalization of "Subject Work.")

9. My personal preference is to find the "Definitions" clause at the beginning of a contract so you are acquainted with what you are talking about rather than at the end where you have to thumb back to it. Article 15 could thus become Section (c) to Article 1 or Article 2.

10. Regarding Article 2 "Termination" - do we want to give the contractor the advantage of 30 days notice?

11. I think Article 3, "Compensation" should be slightly revised. Suggest the following:

"The Government shall pay to the contractor as full compensation for the performance of this contract the fixed fee and allowable costs as computed hereunder:

(a) Fixed Fee. The fixed fee shall not exceed          percent of the maximum allowable cost of the project, computed without regard to the fixed fee.

(b) Costs. Actual costs for which the contractor may be reimbursed upon the submission of certified vouchers supplied by the Government and approved by the Contracting Officer shall not exceed          exclusive of fixed fee.

(c) Cost Escape. Notwithstanding any other provision hereof, when and if actual costs in the amount stated in paragraph (b) of this Article 3. shall have been incurred or obligated hereunder, the contractor shall not incur or obligate further actual costs hereunder unless and until the Government shall first agree in writing to reimburse the contractor therefor."

12. Suggest under Article 4, the insertion of a preceding subparagraph in regard to "Vouchers." This can be adapted from page 2 of the incentive-type contract. In using this clause, the final word "below" should

be deleted and the word "herein" inserted.

13. Suggest change in paragraph "Final Payment" as follows:

"(c) Final Payment. The Contracting Officer may withhold all or any part of the final reimbursement payment of cost and/or fee, provided that such withholding does not exceed            percent of such costs and/or fee, pending;

(1) Verification of costs by audit of the contractor's books and records;

(2) Submission of final statements of property accounts required herein;

(3) Disclosure of <sup>invention</sup> patent required hereunder; and

(4) Tender of final release required herein.

14. In subparagraph (d) we believe this would be somewhat clarified by the following verbiage:

"(e) Allowable Costs. The general basis for allowable costs shall be governed by Appendix III, entitled 'Contract Cost Principles' which is attached hereto and incorporated by reference and made a part hereof, subject to the following additional stipulations:

(1) Overhead. Allocation of overhead expenses shall be allowed up to but not exceeding 100% of direct labor charges, exclusive of Federal and State Social Security Taxes."

"Salaries and Bonuses," and "Special Property Acquisition" should be appropriately renumbered. It is assumed that the latter clause refers to property related to the contract. Possibly it should be identified as such.

15. In regard to Article 5, "Title and Identification of Material," I believe there is a slight divergence in the wording from the standard forms employed by other agencies. The first sentence might be changed to read as follows:

"The title to all materials, parts, assemblies, sub-assemblies, supplies, equipment and other property for the cost of which the contractor is entitled to be reimbursed hereunder shall automatically pass to and vest in the Government upon delivery to the contractor or upon the happening of any other event by which title passes from the vendor or supplier thereof, in the case of any such property which is purchased for the performance of this contract, or, in the case of property not so purchased, upon the allocation thereof to the contract by the commencement of processing or use thereof or otherwise."

16. In Article 6 (a), the second line following the word "apparatus," insert the additional word "equipment." In re paragraph (b) "Insurance," the Contracting Officer can be guided by Section 10.302 of the Joint Procurement Regulations.

17. In Article 7, I believe it would be advisable to insert a requirement for submission of an inventory covering property on which no accounting is required. Suggest the last four lines of the Article on page 5, beginning with the words "and provided further that" be amended to read

"And provided further that within 60 days after the termination of subject work, the contractor shall render an accounting and inventory, in accordance with the instructions of the Contracting Officer, for all property governed by this Article."

18. In regard to Article 9 "Subcontractors," further obligation may be placed upon the contractor to obtain additional approval from the Contracting Officer in certain cases. The following situations might be considered - (1) expenditure of \$2,500 or more, (2) research and development work, or (3) acquisition of real property, construction or alteration to buildings exceeding \$100, or restoration of altered buildings, or (4) fabrication, purchase or installation of scientific or technical equipment in excess of \$500 which would normally be treated as a capital expenditure, or (5) items other than in (4) which would normally be treated as capital expenditures, or (6) rental of scientific or technical equipment in excess of \$500 annual rent or rental of any other capital equipment regardless of amount. (Provided that requirements of such a subsection would not apply to contracts for personal services only.)

19. In regard to Article 10 "Patent Indemnity" - there is some question in my mind of the necessity for including this particular clause in a research and development contract, and suggest that we wait until the standard clauses for CPFF contracts are published in the Joint Procurement Regulations.

20. Since considerable research and consideration has gone into the drafting of the Joint Procurement Regulations, believe it would be advisable to follow the motions indicated in 9-107 regarding patent rights and licenses. The various subsections indicated therein require some rearrangement depending on the subject matter of the contract, and for that reason should not be "canned" in one standard article. Appropriate provisions may be required for reporting of royalties and use of copyrights.

21. It is noted in regard to Article 13, the "Disputes" clause, there is a somewhat more elaborate form provided in the Joint Procurement Regulations in Section 7-103.12. It is more specific on the mechanical procedure to be followed and may be preferable. It may also be advisable in some cases to employ a clause similar to that indicated in the recent case of U. S. v Moorman which provided for final determination by the Contracting Officer or the Agency Head of questions of law as well as fact.

22. The "Changes" clause in Section 7-103.2 of the Joint Procurement Regulations is somewhat different from the one contained in the proposed draft, and a combination of the two would probably be advisable.

23. Notice in conclusion that there is no provision made for Delays and Damages, and while we have found that Liquidated Damages do not appear to be advisable, it may be necessary in some cases to insert some appropriate provision.

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